

SENATE BILL NO. 308

BY SENATOR MCPHERSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To amend and reenact R.S. 48:285, 286(A)(1) and (B), 287, 288, 289(B), the introductory
3 paragraph of 290(B), the introductory paragraph of 290(C), and (D), 291, the
4 introductory paragraph of 292(B), 292.1(B), 293, and 294, relative to employment
5 of consultants; to provide relative to the requirements for employment of consultants
6 by the Department of Transportation and Development; to provide for an effective
7 date; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 48:285, 286(A)(1) and (B), 287, 288, 289(B), the introductory
10 paragraph of 290(B), the introductory paragraph of 290(C), and (D), 291, the introductory
11 paragraph of 292(B), 292.1(B), 293, and 294 are hereby amended and reenacted to read as
12 follows:

13 §285. Purpose

14 It is the purpose of this Part to prescribe the policy of the Department of
15 Transportation and Development and other grantee agencies applicable to
16 employment of consultants for construction and preconstruction engineering
17 services, research, planning, environmental, and other activities by a competitive
18 process and a noncompetitive process, except those services under the authority of
19 R.S. 39:1481 through 1526, **R.S. 48:250.2, R.S. 48:250.3**, and R.S. 48:292.1.

20 §286. Retaining of consultants warranted; authorization

A. There are three conditions which shall warrant the retention of the services of consultants by the department:

(1) The magnitude of the work involved in a particular project is determined to be so taxing to the department's available manpower that it will be necessary to defer other essential work if the work is performed by the department staff.

* * *

B. (1) When it is determined by any department section that consulting services are warranted, the section head shall submit a recommendation to the chief engineer, **assistant secretary for operations, assistant secretary for planning and programming,** or assistant secretary of public works, hurricane flood protection, and intermodal transportation, whichever is applicable to the project, stating the need and the supportive reasons for the services, including a description of the project and the estimated cost of the work to be performed.

(2) The chief engineer, assistant secretary for operations, assistant secretary for planning and programming, or assistant secretary of public works, hurricane flood protection, and intermodal transportation, whichever is applicable to the project, shall decide if the need to use consultants for professional services for individual a projects project is warranted based upon information provided by the section head and the criteria established by Subsection A of this Section.

(3) Approval, when granted, shall be considered as being of a general nature, including not only the obvious components of the project which are immediately identifiable, but also ~~smaller~~ ancillary components identified at any time during the life of the project. An additional selection process shall be used for ancillary components when the total of such ancillary components amounts to more than ~~fifty~~ **seventy-five** percent of the original contract.

(4) When it is determined by the chief engineer, **assistant secretary for operations, assistant secretary for planning and programming,** or assistant secretary of public works, hurricane flood protection, and intermodal transportation, whichever is applicable to the project, that there is a need for an outside consultant, the selection shall be made in accordance with the provisions of this Part.

§287. Advertisement; solicitation list; response procedures; ~~participation in~~
~~mentor-protégé program~~

A. A notice of intent to select a firm for performing consultant services and to request responses from qualified firms/teams **firms and teams** shall be distributed as follows: **advertised by posting it on the department's Internet website. The department shall maintain a solicitation list of consultant firms and teams. The department shall send an email notice to consultant firms and teams on its solicitation list to notify of the posting of an advertisement for consultant services on the department's Internet website. In the case of planning, research, or other specialty services, the department or the Louisiana Transportation Research Center may send notices to firms which, to the knowledge of the department or the Louisiana Transportation Research Center, may have experience in such services.**

(1) ~~Through advertisement in the Daily Journal of Commerce.~~

(2) ~~Through advertisement in the Baton Rouge State Times newspaper.~~

(3) ~~By mailing to the firms on the department solicitation list as provided for in this Section.~~

(4) ~~In the case of planning, research, or other specialty services, notices may be sent to firms which, to the department's knowledge, may have experience in such services.~~

(5) ~~By means of other newspapers, trade journals, and other forms of media which may be appropriate for specialty services, and to insure adequate response.~~

B. Notices shall be advertised a minimum of ~~fourteen~~ **ten business** days prior to the deadline for receipt of responses.

C. If the ~~evaluation committee~~ **department** deems that the number of responses received is inadequate, the project may be readvertised using additional media or publications in an attempt to solicit additional responses.

~~D.(1) The project control engineer of the department shall maintain a solicitation list of consultant firms who, for a fee determined by the department, may receive copies of the notices for services.~~

1 ~~(2) The department shall mail notices to firms listed on the department's~~
2 ~~solicitation list for all advertised projects.~~

3 E. D.(1) The advertisement shall detail all information to be submitted in
4 response to the advertisement. In all cases, a properly completed current department
5 standard response form shall be submitted by applicants. The response forms shall
6 be made available by the department ~~from the Consultant Contract Services~~
7 ~~Section~~. If additional information to that provided by the response form is required,
8 it shall be so noted in the advertisement.

9 (2) The applicant shall transmit the response form, ~~as well as~~ and any other
10 required information, to the department prior to the deadline shown in the
11 advertisement. Responses which do not meet the requirements provided for in this
12 Subsection shall not be considered. The department shall consider false or
13 misrepresented information furnished in response to the advertisement as grounds
14 for rejection.

15 F. E. There shall be no advertisement when noncompetitive selection is
16 required utilized. ~~The provisions of this Part shall not supersede the provisions of~~
17 ~~R.S. 47:820.51.~~

18 G. ~~Any request for proposal for any contract governed by the provisions of~~
19 ~~this Part may include incentives as provided herein to encourage participation in the~~
20 ~~mentor-protégé program as provided by R.S. 51:1753.1 and 1753.2 provided that~~
21 ~~such participation is not in conflict with federal provisions relative to the~~
22 ~~procurement of such services:~~

23 ~~(1) Requests for proposals may contain provisions for incentives for work~~
24 ~~completed ahead of schedule. Such incentives shall be not less than five percent~~
25 ~~greater than incentives awarded to contractors who are not mentor-protégé program~~
26 ~~participants.~~

27 ~~(2) Participation in the mentor-protégé program may be included as a~~
28 ~~specific criterion to be considered in awarding a contract.~~

29 §288. Audit requirements

30 A. Any consulting firm doing business with the department shall maintain

accounting records which segregate job costs as prescribed by the department's audit section. Negotiated contracts ~~shall~~ may require a pre-award audit. Post audits may also be required. Pre-determined fee contracts may be audited during the course of the contract, or within three years of final contract payment.

B. Any consultants doing business with the department shall be required to submit to the department audit assurance as set forth in the "Consultant Contract Services Manual" ~~of Instructions for Preparation of Engineering Proposals~~, except that consultants doing business with the Louisiana Transportation Research Center shall comply with its "Manual of Research Procedures." Guidance may also be obtained from the audit section of the department.

C. Contracts entered into with the department may specify a manpower relationship which the consultant will be expected to maintain. For engineering contracts, this relationship shall be based on the total of the estimated engineering, supervision, and principal ~~manhours~~ man-hours expressed as a percentage of the total estimated ~~manhours~~ man-hours in all salary classifications. The department shall monitor this relationship by means of the consultant's progress schedules, invoices, or audits.

§289. Compliance with Civil Rights Act of 1964

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B. As prescribed in Title 49 of the Code of Federal Regulations ~~Section 23 Part 26~~, the department shall ensure that maximum opportunity is afforded to socially and economically disadvantaged ~~and women-owned business enterprises~~ individuals to compete for and participate in consultant contracts.

§290. Requirements of consultants

* * *

B. To be considered for employment for planning, or environmental, ~~or research~~ studies, a consulting firm must meet the following requirements:

* * *

C. ~~Additional requirements~~ Requirements or considerations for consultants for preconstruction or construction services and planning, environmental or research

1 studies are, as follows:

2 * * *

3 D. ~~Subconsultants~~ **Sub-consultants** providing engineering or land surveying
4 services are bound by the requirements for consultants. ~~Subconsultants~~
5 **Sub-consultants** providing other than engineering or land surveying services must
6 demonstrate that qualified personnel are in responsible charge. All ~~subconsultants~~
7 **sub-consultants** are subject to department approval, either at the time of selection
8 or thereafter.

9 * * *

10 §291. Selection procedure; evaluation ~~committee~~ **teams**; ~~evaluation criteria~~

11 A. ~~A committee~~ **Except for research projects, an evaluation team**
12 consisting of five department ~~engineering~~ personnel shall evaluate the qualifications
13 of the responding consultant firms, ~~and report the results of the evaluation to the~~
14 ~~secretary for all projects except research projects.~~ **The consultant contract services**
15 **administrator, or his authorized designee, shall serve as chairman of the**
16 **evaluation team. The consultant contract services administrator, or his**
17 **authorized designee, shall select evaluation team members from department**
18 **personnel who possess experience and qualifications relevant to services to be**
19 **performed for the project.** ~~These personnel will be section heads, or one of their~~
20 ~~immediate assistants, as designated by the section head. Committee members shall~~
21 ~~serve four year terms, except in the case of retirement or promotion. The sections~~
22 ~~from which the personnel will be drawn are: Road Design, Bridge Design, Traffic~~
23 ~~and Planning, Consultant Contract Services, and Construction. In addition other~~
24 ~~persons as determined by the committee chairman may be called for informational~~
25 ~~purposes. Three members present shall constitute a quorum.~~ **At least three**
26 **members of the selected team shall evaluate the qualifications of responding**
27 **consultants. The consultant contract services administrator, or his designee,**
28 **serves ex officio and does not evaluate the responding consultant firms. The**
29 **consultant contract services administrator, or his designee, shall report the**
30 **results of the evaluation team members to the secretary for all projects except**

1 **Louisiana Transportation Research Center projects.** ~~The committee shall elect~~
 2 ~~a committee chairman and secretary.~~

3 B. The Louisiana Transportation Research Center ~~Policy Committee~~ **project**
 4 **selection procedure** shall be ~~the committee for consultant evaluation~~ **in accordance**
 5 **with the Louisiana Transportation Research Center "Manual of Research**
 6 **Procedures"** ~~for research~~ **Louisiana Transportation Research Center** projects.

7 §292. Noncompetitive negotiation selections

8 * * *

9 B. The section head, after ascertaining the need for a noncompetitive
 10 selection, shall request approval from the secretary **or his authorized designee**
 11 through the chief engineer, **assistant secretary for operations, assistant secretary**
 12 **for planning and programming,** or assistant secretary of public works, hurricane
 13 flood protection, and intermodal transportation, whichever is applicable to the
 14 project, to engage a specific firm to perform the required services. The request shall
 15 be in written form containing the following information:

16 * * *

17 §292.1. Small Engineering Consultant Program

18 * * *

19 B. The estimated ~~construction cost of projects in the program~~ **contract fee**
 20 shall not exceed ~~five hundred thousand dollars~~ **the Federal Highway**
 21 **Administration small purchase limit.**

22 * * *

23 §293. Competitive selection

24 A. (1) ~~Upon~~ **Except for Louisiana Transportation Research Center**
 25 **projects, upon** termination of the deadline for receipt of responses, the evaluation
 26 committee team shall confer and evaluate said responses. A point-based rating
 27 system based upon the evaluation criteria and weighting factors provided for in this
 28 Section shall be used by ~~the committee~~ **the team** in its evaluation. Interviews may
 29 be used as necessary for evaluation. However, if interviews are a requirement, the
 30 advertisement shall so state.

1 (2) The ~~committee~~ **team** shall then prepare and present to the secretary a
2 short list of the three highest rated consultant firms provided there are at least three
3 qualified firms. The secretary **or authorized designee** shall make the final
4 evaluation and selection from the list. If ~~none of the firms on the short list are~~
5 ~~out-of-state firms and~~ the secretary **or authorized designee** selects other than the
6 first ranked consultant firm from the short list, the secretary **or authorized designee**
7 shall document his reasons ~~therefor~~ **for selection of other than the first ranked**
8 **consultant firm on the short list**. If any of the firms on the short list are out of state,
9 ~~the secretary may pick from the short list with no explanation of his choice. All~~
10 responding firms will be notified of the selection. The ~~committee~~ **team** will not
11 consider recommendations by others in their evaluation of the firm's qualifications.
12 The ~~committee~~ **team** may be assisted by other department personnel. On those
13 projects for which partial or full funding is supplied by others, the secretary **or**
14 **authorized designee** may consider recommendations by the entity supplying the
15 funds. This recommendation must be for a firm on the short list. The
16 recommendation is not binding on the secretary **or authorized designee**.

17 ~~B. The chairman of the Louisiana Transportation Research Center Policy~~
18 ~~Committee shall recommend to the secretary the final selection of the consultant as~~
19 ~~determined through review procedures by the research project review committee and~~
20 ~~center director. The procedures used shall be the same as those provided for non-~~
21 ~~research projects.~~

22 ~~C.~~ (1) The general criteria and weighting factors to be used by the evaluation
23 ~~committee~~ **team** ~~and the Louisiana Transportation Research Center~~ in evaluating
24 responses to requests for consultant services are as follows:

- 25 (a) Experience, both firm and individual, key staff personnel, as related to the
26 project under consideration, weighting factors of three and four respectively.
- 27 (b) Past performance on department projects, weighting factor of six.
- 28 (c) Current work load, weighting factor of five.
- 29 (d) Firm size as related to project magnitude, weighting factor of three.
- 30 (e) Location where work will be performed, weighting factor of four except

1 that a weighting factor of six is used for Urban System projects.

2 (f) Any special evaluation criteria specified in the advertisement required to
3 meet particular project needs.

4 (2) These weighting factors are those usually used for preconstruction
5 services selections. For other types of services or for special project requirements,
6 the weighting factors may be varied based on the specific project requirements.
7 Weighting factors to be used for each project will be stated in the project's
8 advertisement.

9 ~~(3) The written records produced during the evaluation and selection process~~
10 ~~are subject to the Public Records Act, R.S. 44:1 et seq.~~

11 **C. (1) The Louisiana Transportation Research Center shall utilize the**
12 **selection criteria and weighting factors in its "Manual of Research Procedures"**
13 **and any special evaluation criteria and weighting factors specified in the**
14 **advertisement required to meet particular project needs to evaluate responses**
15 **to requests for proposals for research consultants.**

16 **(2) The director of the Louisiana Transportation Research Center shall**
17 **recommend to the secretary or authorized designee the final selection of the**
18 **consultant as determined by review procedures of the research project review**
19 **committee and center director in accordance with its "Manual of Research**
20 **Procedures."**

21 **D. The written records produced during the evaluation and selection**
22 **process are subject to the Public Records Act, R.S. 44:1 et seq.**

23 §294. Contract types

24 A. The department shall utilize either cost plus fixed fee with a maximum
25 limitation, **cost per unit of work, specific rates of compensation** or lump sum
26 contracts for either competitive or noncompetitive selections. The fee shall either be
27 negotiated or predetermined. In general, negotiated cost plus fixed fee contracts are
28 used for larger projects with more complex and difficult to determine scopes of
29 services, and pre-determined lump sum fee contracts are used for smaller projects
30 with easier to determine scopes of services.

1 B. Procedures for utilizing negotiated lump sum fee, **cost per unit of work,**
2 **specific rates of compensation** or cost plus fixed fee with maximum limitation
3 contracts shall be as follows:

4 (1) Advertisement as required by this Part shall include, but not be limited
5 to, the following:

6 (a) Length and description of project.

7 (b) Services required.

8 (c) Material or information to be furnished by the department.

9 (d) General information and an outline of the selection process, including the
10 criteria/categories used to evaluate the responses and the weighting factors for each.

11 (2) **Except for Louisiana Transportation Research Center projects,**
12 ~~After~~ a consulting firm has been chosen ~~by the secretary~~, such firm shall be invited
13 to submit a proposal within a time limit. Construction and preconstruction proposals
14 shall conform to the "**Consultant Contract Services** Manual" ~~of Instructions for~~
15 ~~Preparation of Engineering Proposals~~. Research proposals shall conform to the
16 **Louisiana Transportation Research Center's "Manual on Research**
17 **Procedures"** ~~Research and Development Manual~~. This proposal shall be analyzed
18 by the technical personnel of the involved units and a pre-award audit ~~shall~~ **may** be
19 obtained.

20 (3) The technical review personnel shall negotiate any differences between
21 the ~~man-hour~~ **man-hour** estimates of the department and the consultant firm. Should
22 attempts at agreement between the department and the consultant be unsuccessful,
23 negotiations shall be terminated and another selection shall be made. This process
24 will continue until agreement is reached with a ~~firm/team~~ **firm or team**.

25 (4) Fees will be based on the negotiated ~~manhours~~ **man-hours**, the audited
26 salary and overhead rates of the ~~firm/team~~ **firm or team** subject to the department's
27 salary and overhead maximums, the designated contingency percentage, and the
28 computed fixed fee. The department's standard fixed fee computation includes
29 consideration for complexity, overall fee size, and magnitude of the firm's overhead.

30 (5) The contract will be executed following agreement on the required work

1 effort. The firm shall have ten business days from the date of mailing to execute
2 and return the contract to the department. Should the firm/~~team~~ fail to timely
3 execute and return the contract, the department may either select another firm/~~team~~
4 from the original respondents or republish the notice of intent.

5 C. Procedures for utilizing non-negotiated pre-determined lump sum fee,
6 cost per unit of work, specific rates of compensation or cost plus fixed fee with
7 a maximum limitation shall be as follows:

8 (1) Advertisement as required by the Part shall include, but not be limited to
9 the following:

10 (a) Length and description of project.

11 (b) Services required.

12 ~~(c) Estimated number of tracings.~~

13 ~~(d)~~ (c) Material or information to be furnished by the department.

14 ~~(e)~~ (d) Fees by phase of work.

15 ~~(f)~~ (e) General information, including an outline of the selection process,
16 including the criteria/categories used to evaluate the responses and the weighting
17 factors for each.

18 (2) Fees shall be determined by using the department's ~~manhour~~ man-hour
19 estimate, the latest average of applicable wage rates, and the latest average overhead,
20 together with a contingency where appropriate and a profit computed in accordance
21 with the department's standard procedure. These fees shall not be subject to further
22 negotiation.

23 (3) The contract will be executed following ~~Upon~~ notification of selection,
24 ~~the~~ The selected firm shall have ten business days from ~~such notice~~ the date of
25 mailing to execute and return the contract to the department. If the firm fails to
26 timely execute and return the contract, the department shall select another firm
27 from the original respondents or republish the notice of intent.

28 Section 2. This Act shall become effective upon signature by the governor or, if not
29 signed by the governor, upon expiration of the time for bills to become law without signature
30 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
2 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____